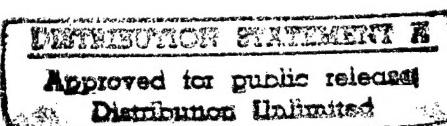


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**CLINTON ADMINISTRATION POLICY  
AND  
FEDERAL LABOR RELATIONS**

by  
**Major Peter J. Seebeck**  
**August 1997**

**Independent Research-Graduate Thesis**  
**Professor Louis Aronin**

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## I. INTRODUCTION

“It is time to radically change the way government operates...”<sup>1</sup>  
President Bill Clinton and Vice President Al Gore.

On March 3, 1993, President Bill Clinton created the National Performance Review (NPR) with the goal of transforming the government into one that “works better and costs less.”<sup>2</sup> The efforts of the NPR have also been popularly called “reinventing government” which forms the core Clinton Administration policy concerning federal labor relations.

Vice President Al Gore was put at the helm of the reinvention effort and was tasked to review federal government operations. On September 23, 1993, Vice President Gore released a report of this review effort. The report was prepared with the help of experts and input from federal employees listing numerous recommendations to change the way the federal government operates.<sup>3</sup>

This paper will explore the Clinton Administration’s NPR initiatives and their effect on federal labor relations. The paper will also examine other Administration measures and postures concerning labor relations and how these efforts affect the federal sector. The positions of Republicans, organized labor, and various other commentators concerning federal labor relations and their reaction to Clinton Administration initiatives will also be explored.

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<sup>1</sup> Vice President Al Gore, *From Red Tape to Results: Creating a Government that Works Better and Costs Less—Report of the National Performance Review*, i (Sept. 7, 1993).

<sup>2</sup> *A Brief History of the National Performance Review*, taken from NPR web site: <http://www.npr.gov>. The President’s initiative was influenced by David Osborne and Ted Gaeblers’ work, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, 1992. Osborne and Gaebler offered principles to ensure a successful entrepreneurial public organization.

<sup>3</sup> Gore, *supra* note 1, at p. iii. Vice President Gore boldly stated that the NPR recommendations would produce savings of \$108 billion over 5 years if enacted. He also stated that the proposed reinventions would reduce the size of the civilian, non-postal workforce by 12% over 5 years.

## **II. POLITICAL CONSIDERATIONS**

“I am very proud of government employees. We maximized our efforts to reelect President Clinton and Vice President Al Gore and we succeeded.”<sup>4</sup>

John N. Sturdivant, National President  
American Federation of Government Employees

“This performance review is not about politics.”<sup>5</sup>

President Bill Clinton

It can be argued that most decisions made by politicians are motivated, at least in part, by political considerations. National political campaigns require a staggering amount of funds and various groups are happy to contribute with the hope of influencing the politician.

Organized labor’s support for the Democratic Party is not new. Republicans have always been thought to represent the interests of the employer. It was the Democrats who supported the pro-labor National Labor Relations Act (NLRA) in the 1930’s, while the Taft-Hartley Amendments, an anathema to labor unions, was overwhelmingly supported by Republicans. President Reagan’s firing of the striking PATCO air traffic controllers in the early 1980’s further deteriorated the relationship between organized labor and the Republican party.

Organized labor solidly supported President Clinton in 1992, but they really tried to flex their muscles in favor of Democrats in the 1996 elections. John J. Sweeney took over the presidency of the American Federation of Labor-Congress of Industrial

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<sup>4</sup> AFGE-Endorsed Candidates Win Big, AFGE Bulletin, Nov./Dec. 1996.

<sup>5</sup> Gore, *supra* note 1, at p. iv. Quote from President Clinton’s speech in announcing the NPR in 1993.

Organizations (AFL-CIO) in 1995 and urged a political militancy for organized labor.<sup>6</sup>

Some argue that Mr. Sweeney has turned the AFL-CIO on a “hard-left course.”<sup>7</sup>

The influence of organized labor in the Democratic Party is undeniable. About 28 percent of the delegates and alternates of the most recent Democratic convention were members of the AFL-CIO or the National Education Association.<sup>8</sup> Doug Bandow, senior fellow at the CATO Institute, believes that the Democratic Party could not survive without organized labor’s money and manpower.<sup>9</sup>

One of the most influential segments of organized labor is in the public sector. Today, union membership is 15.5 percent of the private sector workforce, while the public sector accounts for much of labor’s growth and makes up 38.7 percent of the workforce.<sup>10</sup> Public sector union leaders went all-out for the Clinton-Gore ticket and blasted powerful Republicans with zeal.<sup>11</sup>

The growing strength and militancy of the federal government labor unions could not be ignored by either party. AFGE president Sturdivant’s “Remember in November” campaign in 1996 was a direct attack on congressional Republicans. Support, or lack of

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<sup>6</sup> Leo Troy, *Unions ‘Charge’ into the 21<sup>st</sup> Century*, Wall Street Journal, March 18, 1997, at A22. Mr. Troy argues that Mr. Sweeney’s efforts in politics and spending to help organizing drives have backfired. The success of the political effort though is not easily measured. Although the Republicans retained control of Congress, the large political spending may have renewed Democratic efforts to aid unions, while many Republicans are fearful of being targeted by the AFL-CIO.

<sup>7</sup> National Center for Policy Analysis quoting Carl Horowitz, *New Militancy at the AFL-CIO?*, Investors Business Daily, November 14, 1995.

<sup>8</sup> Doug Bandow, *Captive Democrats*, Copley News Service, October 18, 1996.

<sup>9</sup> *Id.*

<sup>10</sup> George Will, *Labor’s New Leader has Fire in his Belly and in his Vocabulary. But does that Matter?*, Newsweek, 1997.

<sup>11</sup> Mike Causey, *Labor goes out on a Limb*, Washington Post, October 13, 1996, at B2. The author in a pre-1996 election article speculated that if the Republicans won the election, labor leaders would have difficulty mending relationships because of their extreme rhetoric. Mr. Causey states, “A Republican win might force some union leaders to seek help from the United Nations to repair their Congressional ties.”

support, by such union leaders could be critical in future elections.<sup>12</sup> AFGE boasts that 70 percent of the Congressional candidates they endorsed won election because of strong AFGE grass roots efforts and large union voter turnout.<sup>13</sup>

#### A. The Democrats

Clearly, the Clinton Administration has sought to appease organized labor in numerous instances. For example, the National Partnership Council (NPC) included the presidents of the three largest employee unions and the head of the AFL-CIO public employee department, but excluded, until recently, groups representing managers and executives.<sup>14</sup> But the unions risk being overlooked by the Democrats because of their almost exclusive support of the party. The risk is that the Democrats will take organized labor's support for granted instead of having to court this support with legislative initiatives.<sup>15</sup>

Although organized labor was a vigorous supporter of President Clinton in 1992 and 1996, the President has not always marched in lock-step with their interests. The President took on organized labor in supporting the North American Free Trade Agreement (NAFTA) and his plans to extend NAFTA promises another confrontation.<sup>16</sup> Intervention in the American Airline pilot strike also drew some ire from organized

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<sup>12</sup> *Vote as if your Job Depends on It—It does!*, The Government Standard, Sept.-Oct. 1996, internet site <http://www.afge.org/standard/gs12-5.HTM>.

<sup>13</sup> See *supra* note 4.

<sup>14</sup> *The New Partners*, Executive Memo, March 1996.

<sup>15</sup> Ross Mackenzie, *The Serbs, The Saudis, the AFL-CIO*, Richmond Times Dispatch, March 6, 1997. Virtually all of the AFL-CIO's support was for the Democrats in the recent election. Ross Mackenzie states that "Big Labor" is today essentially a wing of the Democratic Party.

<sup>16</sup> Steven Greenhouse, *Union Leaders Oppose Expanding Free Trade Treaty without Modification*, New York Times, February 20, 1997.

labor.<sup>17</sup> Complaining about Administration inaction on federal retiree cost-of-living adjustments (COLA's), John Sturdivant warns, "President Clinton should not misinterpret our support for his reelection as support for those misguided proposals he sends our way."<sup>18</sup> In fact, Mr. Sturdivant appears to be hedging his bets, "In this new era of bipartisanship, AFGE will be talking with members of Congress from both sides of the aisle..."<sup>19</sup>

A Senate Democratic staffer with close ties to the AFL-CIO reported that organized labor fears that President Clinton will "sell them out in the end."<sup>20</sup> Concern of being "sold out" by Democrats has led to a new AFL-CIO advertising campaign targeting numerous conservative Democrats in the next campaign.<sup>21</sup> Peggy Taylor, chief lobbyist for the AFL-CIO, says that the advertising will run "regardless of Democratic sensitivities."<sup>22</sup>

Even though organized labor fears abandonment by the Democrats and has criticized the Administration on some policies, the Clinton Administration has generally supported labor. The NPR has stressed the importance of unions and recommended a partnership effort and a federal "agency shop."<sup>23</sup> President Clinton issued an executive order to ban "striker replacements"<sup>24</sup> and the President's Dunlap Commission was

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<sup>17</sup> Matt Bair, *Clinton Delays a Strike for Now, but the Fight between American Airlines and its Pilots isn't Over*, April 15, 1997.

<sup>18</sup> *Be Fair-We Still Give More Than Our Share*, AFGE News Release, February 6, 1997.

<sup>19</sup> *Id.*

<sup>20</sup> *McConnell's Anti-Reform Group Seeks Alliance with AFL-CIO*, Inside the new Congress, February 1997.

<sup>21</sup> *AFL-CIO ads Hit Conservatives in Democratic Party*, Washington Times, May 30, 1997 at A4.

<sup>22</sup> *Id.*

<sup>23</sup> Troy, *supra* note 6.

<sup>24</sup> *Id.* The executive order was successfully challenged in the Federal Courts as being beyond the President's power.

established to provide groundwork for revised labor laws that would aid union efforts.<sup>25</sup>

The Democrats also serve as protectors against Republican initiatives that would go against the interests of organized labor.

Support for organized labor in Democratic ranks appears secure in the future. Vice President Gore is set to run for the presidency in 2000, with likely opposition from Congressional Minority Leader, Richard Gephardt. Mr. Gephardt enjoys strong support from organized labor, but Vice President Gore also seeks backing from this constituency.<sup>26</sup> Union leaders said they were surprised at Vice President Gore's pro-union rhetoric at the AFL-CIO convention in February 1997. This type of "on the record" pro-labor stance bodes well for the Vice President's support of labor legislation during President Clinton's second term.<sup>27</sup>

### **B. The Republicans**

One significant risk organized labor takes by its exclusive support of Democrats is that the Republicans may remain in control of the Congress. Essentially, Republicans have no political advantage in supporting organized labor positions because they will not get labor support regardless of their actions. In fact, the opposite may occur. For Republicans there is very little downside to a retaliation effort against a political enemy. The hold-up of Alexis Herman as Labor Secretary and attacks on federal union "official time" have been viewed by some as retaliation.<sup>28</sup> The war between Republican leaders and federal sector union leaders is illustrated by John Sturdivant's recent declination to testify

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<sup>25</sup> *Id.*

<sup>26</sup> *Gore-Gephardt Fight takes on Factual Flavor*, Washington Times, May 29, 1997 at A6.

<sup>27</sup> Steven Greenhouse, *Gore informs Labor of New Restrictions on U.S. Contractors*, New York Times, February 19, 1987.

<sup>28</sup> *Herman on Hold*, Wall Street Journal, April 17, 1997, at A22.

before the House Civil Service Subcommittee. Mr. Sturdivant openly criticized subcommittee chairman John Mica stating that the hearing was a political set-up.<sup>29</sup> He sent out fundraising appeals calling Mica the “most dangerous man in history” to be in charge of civil service matters.<sup>30</sup> Mr. Mica did not speak of revenge, but did state that he has a “long memory.”<sup>31</sup>

The bombardment of money spent by organized labor during the last election left the Republicans somewhat shell-shocked. Republicans may try to thwart such efforts in the future by trying to enforce the United States Supreme Court’s 1988 decision of Communications Workers of America v. Beck.<sup>32</sup> The holding in Beck is essentially that employees forced to pay union dues cannot be compelled to contribute to the union’s partisan political activities. Republicans express frustration that, although virtually all organized labor political spending goes to support Democrats, 40 percent of the rank and file union members vote Republican.<sup>33</sup> The Republicans argue that these union members are forced to support candidates in whom they do not agree.

Shortly after his inauguration in 1993, President Clinton issued an executive order on Beck which revoked the requirement that federal contractors inform workers they were entitled to keep their Beck money. The *Wall Street Journal* has accused the President of intentionally ignoring the Beck decision. They state, the “President’s chutzpah on Beck is worthy of FDR.”<sup>34</sup> Most Republicans, such as Representative Jon Christensen, wish to

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<sup>29</sup> Causey, *supra* note 11.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Communication Workers of America v. Beck 487 U.S. 735 (1988).

<sup>33</sup> Aaron Stealman, *Have Unions Betrayed Their Heritage?*, The Heritage Foundation, January 30, 1997.

<sup>34</sup> Amity Shlaes, *Let the President Follow the Law*, *Wall Street Journal*, October 9, 1996, at A23.

pass a workers "Right to Know" Act concerning Beck rights.<sup>35</sup> The arguments on whether the Beck decision should be enforced fall clearly along political lines.

### III. ADMINISTRATION TACTICS: THE EXECUTIVE ORDER

"There seems to be a pattern of doing things through executive order that should really be done by the legislative process."<sup>36</sup>

Senator Trent Lott,  
Senate Majority Leader

President Clinton has often used his power to issue executive orders to implement policies. This somewhat controversial method has been used by the President in the field of labor relations.<sup>37</sup> The controversy involves allegations that use of unilateral executive orders bypass the legislative process and democratic principles. As discussed earlier, there are political ramifications concerning any action involving highly charged issues of labor relations. Because of the incendiary nature of labor legislation, cooperation between the two major parties has been virtually nil, resulting in stalemate. Republicans fear President Clinton is attempting to make an end run around them through the executive order in an effort to satisfy labor supporters frustrated by legislative stalemate.<sup>38</sup>

In one instance, a Clinton executive order has been struck down. During the President's first term, he issued an executive order blocking federal contracts to employers

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<sup>35</sup> Jon Christensen, *Protecting workers from union leaders*, Washington Times, May 5, 1997. Not ironically, Representative Christensen was targeted in his 1996 political race by the AFL-CIO, who spent \$1,000,000 to try to defeat him. Whether in retaliation or political necessity, it is clear that such Republicans are motivated to slowdown union political spending.

<sup>36</sup> Kevin Galvin, Associated Press, April 15, 1997.

<sup>37</sup> Labor relations initiatives for which an executive order has been issued include banning striker replacement by government contractors, barring government contracts with companies without a satisfactory record in regard to labor and employment practices, and the mandate of labor management partnerships throughout the Executive Branch.

who permanently replace economic strikers. This executive order was an attempt to circumvent NLRB v. Mackay Radio & Telephone Co.,<sup>39</sup> which held that employers had the right to permanently replace workers participating in an economic strike.

On February 2, 1996, the United States Court of Appeals for the District of Columbia struck down President Clinton's executive order.<sup>40</sup> The court held that the executive order violated the National Labor Relations Act by upsetting the balance of management's right to replace economic strikers and the employee's right to strike. Essentially, the court found that the President had no authority to alter the balance of power between management and unions as established by federal law.<sup>41</sup> President Clinton indicated that he will instruct the Justice Department to attempt to overturn the decision.<sup>42</sup> The United States Chamber of Commerce, which brought the case, stated that the decision prevented the "transparent political payoff to this Administration's labor union allies."<sup>43</sup>

Even though the extent of the executive order is in doubt, President Clinton continues to use it to impact labor relations. Recently, Vice President Gore promised the AFL-CIO executive council that an executive order would be issued encouraging federal agencies to consider labor agreements for government-funded projects and barring contracts to companies that do not have "satisfactory labor and employment practices."<sup>44</sup> Business groups and Republicans again appear to be ready to fight the President's method

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<sup>38</sup> Glenn Burkins and Gerald F. Seib, *Alexis Herman is Pawn in Feud over Executive Order*, Wall Street Journal, April 28, 1997, at A20.

<sup>39</sup> 304 U.S. 333 (1938).

<sup>40</sup> Chamber of Commerce v. Reich, 74 F.3d 1322 (D.C. Cir. 1996).

<sup>41</sup> Baker and McKenzie, *Labor Union Activities in U.S.*, Global Labour and Employment Employee Benefits Bulletin, May 1996, at internet web site <http://www.bakerinfo.com>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Galvin, *supra* note 36.

of implementing policy by executive order.<sup>45</sup> Republican Senator Judd Gregg remarks, "It's a payoff. There's a very strong feeling on our side. There's a willingness to go to the mat... It's an attempt to tell agencies to either run union contracts through or not to contract."<sup>46</sup> A confrontation on the issue appears inevitable, because White House officials won't agree to shelve the executive order.<sup>47</sup> Vice President Gore has commented on the issue:

We'll send a message to business: How you treat your employees and how you treat your unions count with us. If you want to do business with the federal government, you'd better clean up your act... Unions matter, and the state of our Union depends on the state of our unions.<sup>48</sup>

The executive order has become an important tool for President Clinton to promote his labor relations objectives, but current disputes cast doubt on future usefulness of this vehicle.<sup>49</sup>

## IV. REINVENTING FEDERAL LABOR RELATIONS

### A. Background

Our long-term goal is to change the very culture of the federal government...A government that puts people first, puts its employees first, too. It empowers them, freeing them from mindnumbing rules and

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<sup>45</sup> Burkins and Seib, *supra* note 38. Collateral attacks on the executive order have already occurred. The President's nominee for Labor Secretary, Alexis Herman, had her confirmation delayed partly because of the feud over the use of the executive order. In an April 28, 1997, article in *The Wall Street Journal*, Glenn Burkins and Gerald F. Seib state that, "Alexis Herman is pawn in feud over executive order."

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Feds to Crack Down on Contractors who Abuse Workers*, North West Labor Press, May 7, 1997.

<sup>49</sup> There is also dispute concerning the obligations of federal agencies covered by an executive order to follow the order. This topic will be discussed in a later section of the paper concerning the President's executive order on partnerships and the Department of the Air Force's alleged noncompliance with the executive order's provisions.

regulations. It delegates authority and responsibility. And it provides for them a clear sense of mission.<sup>50</sup>

Vice President Al Gore

The NPR's widespread effort has the objective of transforming the entire process of running the government. The Clinton Administration came into power in 1992 with a mandate to "change" the way government worked. Although previous administrations have promised to change the way government operates, President Clinton promised "historic change," and an effort that would "reinvent" the way things were done.<sup>51</sup> The effort was based on listening to the people, "customers," and federal employees, in an attempt to find ways to cut through the red tape and make a government that "works better and costs less."<sup>52</sup>

One of the central tenets of this reinvention effort was to "empower" the federal employee to achieve desired results.<sup>53</sup> Vice President Gore openly criticized the way the government managed "some of the most important and complex enterprises in the world." The Vice President cited poor labor relations in the federal workplace as a principle reason for such mismanagement. He specifically refers to a 1991 General Accounting Office (GAO) report which concluded that federal labor relations were "not working well."<sup>54</sup> The report criticized current federal bargaining processes as "too adversarial, bogged down by litigation over minute details, plagued by slow and lengthy dispute resolution, and weakened by poor management."<sup>55</sup>

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<sup>50</sup> *Empowering Employees to get Results*, downloaded from internet website <http://sunsite.unam.mx/hpr/hhpr-3.htm>.

<sup>51</sup> Gore, *supra* note 1. It is difficult to miss the intent of the Administration to alter the way government operates. The Report of the NPR is replete with the words "change" and "reinventing."

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* At 65.

<sup>54</sup> *Id.* At 87.

<sup>55</sup> *Id.*

Consequently, reform of labor-management relations was a high priority for the Administration. Vice President Gore criticized the Civil Service Reform Act of 1978 as contributing to the adversarial relationship between management and labor. The diversity in the workforce and the change in the types of activities performed by that workforce are reasons the Vice President uses to justify radically altering the way traditional labor-management relations are handled.<sup>56</sup> He believes successful private sector operations based on cooperation between management and labor should be emulated in restructuring federal sector operations. In fact, the Vice President ultimately wishes federal organizations to provide the private sector with an exemplary model of how a high performing organization should be run.<sup>57</sup>

To bring about the change in federal labor-management relations, the Vice President recommended that President Clinton establish a National Partnership Council (NPC). The purpose of the NPC was to “transform the adversarial relationship that dominates federal union-management interaction into a partnership for reinvention and change.”<sup>58</sup> The NPC was to implement the partnership efforts recommended by the Vice President and ordered by the President.<sup>59</sup>

President Clinton followed the recommendations of Vice President Gore by issuing Executive Order (E.O.) 12871 on October 1, 1993.<sup>60</sup> E.O. 12871 established the NPC

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<sup>56</sup> *Id.*

<sup>57</sup> *Reinventing Human Resource Management*, HRM 13: Form Labor-Management Partnerships for Success, downloaded from internet Reinvention website.

<sup>58</sup> Gore, *supra* note 1 at 87.

<sup>59</sup> *Id.*

<sup>60</sup> Executive Order 12871, 58 Fed. Reg. 52201 (1993). Extended by Executive Order 12974, 60 Fed. Reg. 51875 (1995). Membership amended by Executive Order 12983, 60 Fed. Reg. 66855 (1995).

and the members composing the Council.<sup>61</sup> Essentially, E.O. 12871 consists of two parts: concepts and methods. The concepts of the executive order are set out in a document entitled “Reinventing Human Resource Management.”<sup>62</sup>

- The goal of any labor-management partnership is the creation of a high-performance organization to deliver quality services to the American people in a way that integrates employee and other stakeholder interests.
- Partners work for each other, not against each other. They respect each other’s contributions and have a sense of ownership of, and share in decisions that effect, the organization’s product and services.
- Partners work in team environments that value contributions based on knowledge and experience, and blend these contributions to enhance quality, creativity, flexibility, and responsiveness.
- Management’s role shifts from an emphasis on protecting its authority to promoting empowerment at the lowest practical levels to provide for employee and union participation.
- The union’s role shifts from a reactive posture to proactive employee representation in support of agency mission accomplishment and workplace effectiveness.
- When we speak of employees and partnerships, and when employees have collectively decided to elect representatives to speak on their behalf, then the unions and employees must be treated as full partners.
- Changing the culture of the federal government requires overcoming resistance from employees and managers alike. Each naturally will believe that the change may bring certain losses of what they value. Developing a partnership in any change effort provides the institutional help to support movement to the federal workforce and organization of the future.

To support goal attainment the executive order establishes certain methods be put into place:

- Create the National Partnership Council to champion the partnership goal.

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<sup>61</sup> See *supra* note 57. Members of the NPC were to include: 1) The Director of the Office of Personnel Management 2) The Deputy Secretary of Labor 3) The Deputy Director for Management, Office of Management and Budget 4) Chair, Federal Labor Relations Authority 5) Federal Mediation and Conciliation Director 6) President, American Federation of Government Employees, AFL-CIO 7) President, National Federation of Federal Employees 8) President, National Treasury Employees Union 9) Secretary-Treasurer, Public Employees Department, AFL-CIO, 10) A Deputy Secretary or other officer with department or agency-wide authority from two executive departments or agencies, not otherwise represented on the Council. Membership was enlarged to include management representatives by amendment in 1995. The addition included one elected office holder from both the Federal Managers Association and the Senior Executives Association.

<sup>62</sup> *Id.* At 5.

- Encourage the formation of similar councils or labor-management committees at appropriate levels in each agency, or adapt existing bodies to meet this purpose, and identify and/or train facilitators for these labor-management committees as needed.
- Encourage systematic training of significant portions of agency staffs (including line managers and first line supervisors) and union officials (including stewards) in alternative dispute resolution (ADR) techniques, interest-based bargaining approaches, and joint problem-solving/decision-making methods.<sup>63</sup>

The NPC was charged with championing the President's partnership mandate and developing future steps.<sup>64</sup> Although tasked with various responsibilities, the primary task of the NPC was to develop legislative proposals for the President.<sup>65</sup> In January 1994, the NPC issued a report proposing recommendations and options for statutory reform of federal labor relations.<sup>66</sup> Among the proposed recommendations was to:

- permit consensual agreements between parties involving management rights.
- broaden the scope of bargaining.
- allow bargaining on operational matters protected by §7106(a)(2).
- eliminate agency review of collective bargaining agreements.
- allow submission of negotiability issues to arbitration.
- use consensus or alternative dispute resolution to establish rules that limit negotiation.
- institute a "fair share" dues union security agreement.
- implement routine use access to the union for otherwise exempt information.
- allow voluntary recognition by an agency of an exclusive bargaining representative.
- amend the definition of supervisor.

As of June 1997, efforts to codify the NPC's proposed recommendations have not been successful.

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<sup>63</sup> *Id.* At 6.

<sup>64</sup> *Step 5: Forming a Labor-Management Partnership* at 2, downloaded from internet website <http://sunsite.unam.mx:80>

<sup>65</sup> NPC-Mission Statement, downloaded from internet website at NPR homepage. Among the responsibilities tasked to the NPC included: advising the President on labor-management partnerships and promoting partnership efforts, and proposing legislative changes related to labor relations, staffing, classification, and compensation, and performance management.

The NPC recommendations represent a significant shift in policy regarding federal labor relations. Most of the recommendations show a decided slant toward the interests of the unions. This slant can be explained by looking at the composition of the Council, made up of labor leaders and political appointees.<sup>67</sup> Although the NPC has a pro-union bent, one union official complained that the NPC is a “toothless tiger” that has refused to address substantive issues.<sup>68</sup>

Enthusiasm for reinventing federal labor relations has not waned in the Administration. *The Blair House Papers* issued by President Clinton and Vice President Gore in January 1997 renews the call for cooperation between labor and management.<sup>69</sup> This report also stresses the importance of alternative dispute resolution. E.O. 12988, which directs the use of alternative dispute resolution when appropriate, is cited as support for this proposition.<sup>70</sup>

## B. Partnerships

“...I looked up the word ‘partner’ in the dictionary, and in Webster’s I found at least one definition that goes like this: ‘One of two persons that dance together.’ Well, that’s probably a pretty good description of how some in these partnership arrangements must feel as you test your new partnerships. Two steps forward, and one step back, a little shuffle to the left, then back right, the occasional dip here and there;

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<sup>66</sup> NPC, *A Report to the President on Implementing Recommendations of the NPR* (Jan. 1994). See also Major Richard K. Johnson, *Labor National Performance Review & Reinvention: Should It “Reinvent” Our Federal -Management Relations?*, 40 AFL Review (138)(1996).

<sup>67</sup> *Id.* Johnson at 139.

<sup>68</sup> Personal interview with Mr. Gene Voegtlind, Legislative Liaison, National Federation of Federal Employees (May 30, 1997).

<sup>69</sup> President Bill Clinton & Vice President Al Gore, *The Blair House Papers: National Performance Review*, 7 (Jan. 1997). The report recommends the following guidelines: establish a successful partnership, promote collaborative problem solving, expand partnerships throughout the entire organization, invest in human capital, resolve the disputes with consensual methods.

<sup>70</sup> *Id.*

sometimes you feel a little bit like a nervous couple on the first date,  
hoping to get through without tripping.”<sup>71</sup>

Vice President Al Gore

### **1. Cooperation or Collusion**

Traditionally, labor-management relations in the United States have been adversarial. This mindset, expressed in the National Labor Relations Act, is essentially that employer's interest is to reduce cost (including employee wages and benefits), while employees seek to maximize wages and benefits. This traditional approach ignores common interests shared by both management and labor.<sup>72</sup> The Clinton Administration has sought to “turn the corner” away from this traditional adversarial relationship by having the parties work as a team with a common purpose and vision.<sup>73</sup>

A key question arises is whether this partnership is possible, and if it is, should it be encouraged? It may seem like a radical thought to question whether parties should cooperate, but zealous advocacy by a union for employee interests is essential to the system. Essentially, if the employees' bargaining agent becomes too closely aligned with management, there is a perception of a conflict of interest. This can be especially troublesome in the federal sector with union leaders “partnering” over downsizing. Partnering in downsizing efforts puts union leaders in the unenviable position of having a part in the reduction of the workforce.

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<sup>71</sup> Vice President Al Gore, address at the NPR National Partnership Awards (Feb. 14, 1996).

<sup>72</sup> One clear common interest is the viability of the business entity itself.

<sup>73</sup> *Labor Management Partnerships*, downloaded from internet website PERMISS. Guidance given to labor and management as to what constitutes a successful partnership includes: 1) an environment that respects and values all employees, 2) a willingness to share power, 3) respect and trust for all or the desire to work toward this goal, 4) open and candid sharing of information, 5) joint decision making on issues of common concern and agreement reached through consensus, 6) cooperation even though some may disagree on specific issues, 7) patience for and commitment to partnership for the long haul, 8) problems identified and solved jointly to better serve customers and achieve the mission, and 9) faith that partnership will lead to more effective organization.

Federal policy concerning labor-management cooperation appears to change according to whether a union is present. The National Labor Relations Act makes it an unfair labor practice for a private sector employer to cooperate with employees through committees that amount to what is called “company unions.”<sup>74</sup> This law can butt up against management attempts to form labor-management committees striving to achieve “quality” goals. A recent National Labor Relations Board decision<sup>75</sup> held that an employer commits an unfair labor practice if he/she “deals with” a nonunion employee organization concerning terms and conditions of employment.

Debate as to the extent of partnership between labor and management has gone on for quite some time. Differing approaches are demonstrated by statements of two influential men, John L. Lewis, founder of the Congress of Industrial Organizations, and Louis D. Brandeis, former Supreme Court Justice,:

Mr. Lewis: “Labor and capital may be partners in theory, but they are enemies in fact.”

Justice Brandeis: “Don’t assume that the interests of employers and employees are necessarily hostile...that what’s good for one is necessarily bad for the other. The opposite is more apt to be the case. While they have different interests they are likely to prosper or suffer together.”<sup>76</sup>

The Clinton Administration seems to recognize the blurred line between cooperation and collusion. They believe the biggest problem in forging a new partnership

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<sup>74</sup> §8(a)(2). It is an unfair labor practice for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it...”

<sup>75</sup> Electromation, Inc. 309 N.L.R.B. 990(1992), enforced, 35 F.3d 1148 (7<sup>th</sup> Cir. 1994).

<sup>76</sup> Governor Tom Ridge, address titled *Economic Growth Through Labor-Management Cooperation*, given at Pittsburgh Hyatt Hotel (Sept. 4, 1995).

“will be changing the long standing attitudes of management and union officials, and trying to eliminate the baggage of our past experiences under an adversarial system.”<sup>77</sup>

Although the Administration calls for “win-win” resolution of disputes,<sup>78</sup> this cannot always result. Therefore, a natural tension between management and labor is often present. It would be naïve to believe that two sides with often opposing interests can easily put aside conflicts. On the other hand, management and labor share many common interests and goals. A failure to cooperate on mutual interest items can lead to inefficiency and hostility. A partnership between labor and management is a noble goal that can create greater efficiency, but the achievement of this goal is difficult because of the natural tension that exists.

## **2. Partnerships and NPR**

The concept of labor-management partnership was the centerpiece of the Clinton Administration’s drive to reform government.<sup>79</sup> Vice President Gore has stated that partnerships would prove to be “the cornerstone of the quality revolution in the federal workplace.”<sup>80</sup> President Clinton’s belief in partnerships was shown when he issued Section 2 of the Executive Order, giving direction for the implementation of partnerships throughout the executive branch.<sup>81</sup> The President directed the head of each agency to:

- a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform the government;

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<sup>77</sup> *Partnerships the Second Time Around*, downloaded from internet website 2<sup>nd</sup> chance.

<sup>78</sup> *Id.*

<sup>79</sup> *Union/Agency ‘Partnerships’ What Lies Ahead*, Fends Government Performance Report (Jan. 13, 1997).

<sup>80</sup> Brad Stratton ed., *Reinventing Government Through Labor-Management Partnerships*, Quality Progress (June 1994).

<sup>81</sup> See *supra* note 60.

- b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;
- c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;
- d) negotiate over the subjects set forth in 5 U.S.C. 7106 (b)(1), and instruct subordinate officials to do the same; and
- e) evaluate progress and improvements in organizational performance resulting from labor-management partnerships.<sup>82</sup>

The Office of Personnel Management (OPM) was directed to implement the recommendations made by the NPR and NPC.<sup>83</sup> OPM provided each agency guidance on the subject of partnerships, and the agencies set up their own partnership councils.<sup>84</sup> The individual agencies were tasked with training employees and union representatives, who are federal employees, in alternative dispute resolution techniques and interest based bargaining.<sup>85</sup> A 1996 survey showed that 606,220 of the 813,000 federal workers responding were involved in partnership agreements with their agencies.<sup>86</sup> Phyllis Segal, Chair, Federal Labor Relations Authority, remarked, "The seeds of labor-management partnership have been widely sown and are producing a promising harvest."<sup>87</sup>

### **C. Partnerships: Success or Failure: Opinions of Proponents and Critics**

#### **1. Administration and Government Officials**

"Partnerships are one of the unheralded successes of the Administration."<sup>88</sup>

Phyllis Segal, Chair, Federal Labor Relations Authority

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<sup>82</sup> *Id.*

<sup>83</sup> Johnson, *supra* note 66 at 139.

<sup>84</sup> Memorandum from Ronald P. Saunders, Principal Director, Civilian Personnel Policy/Equal Opportunity, on E.O. 12871, *Labor-Management Partnerships* (Dec. 29, 1993).

<sup>85</sup> *Id.*

<sup>86</sup> *Government that Works: Case Histories Prove Efficiency Saves Taxpayers Dollars*, AFGE News Release, Sept. 16, 1996.

<sup>87</sup> David Hornestay, *Partnership Pays*, Feb. 1996, downloaded from internet website govexec.com.

<sup>88</sup> *Id.*

As could be expected from something as political in nature as the reinventing government initiative, government officials have praised partnership efforts. Vice President Gore's potential 2000 election bid will certainly be affected by how the public perceives the value of NPR, a cause that he is closely associated with. Such obvious political ramifications of NPR initiatives should cause an observer to look upon comments by government officials with a jaundiced eye. On the other hand, comments made by political opponents critical of the reinvention efforts must also be viewed skeptically because of similar political motivation. With this caveat, here is a sampling of comments of high-level government officials:

The savings the American people are seeing today could not have been made without the dedicated work of many who take pride in being public service employees. Through labor-management partnerships, we are reaching new heights.<sup>89</sup>

James King,  
OPM Director and Chairman of the National  
Partnership Council

Even better, more than half said they or someone close to them had directly experienced a change for the better in the way government works.<sup>90</sup>

Bob Stone,  
NPR Project Director on his recent polling private  
sector corporate executives.

We are transforming a labor relations culture that was adversarial, confrontational and dysfunctional. It will take a sustained commitment, but partnerships will become the way of doing business because of what they can accomplish.<sup>91</sup>

Phyllis Segal,  
Chair, Federal Labor Relations Authority

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<sup>89</sup> *Federal Labor-Management Teams Honored*, Office Personnel Management News Release, Sept. 11, 1996.

<sup>90</sup> *Corporate Execs Say Government is Working Better*, Reinvention Express, April 17, 1995.

<sup>91</sup> *Partnership Awards Announced*, Daily Fed., Sept. 11, 1996.

One of the ways the Administration touts its claimed success is by publicizing partnership awards. The NPC honors agency-union teams who work together to improve customer service by cutting costs, simplifying procedures, and empowering employees.<sup>92</sup> The winners of the award receive Vice President Gore's "Eagle Statue." The claimed achievements of these "partnerships" have been outstanding. For instance, the partnership between the United States Mint/American Federation of Government Employees (AFGE) is credited with producing over \$1 million in cost savings and cutting annual operating expenses by more than \$100,000.<sup>93</sup>

Vice President Gore has pointed to stories such as the U.S. Mint and the Army's Red River Depot to illustrate the success of partnership efforts.<sup>94</sup> The Vice President uses these success stories to demonstrate that the federal agencies are up to the task of meeting his high expectations. The challenge, he stated, is to serve the American people with a government that is smaller, but more efficient.<sup>95</sup> Vice President Gore boasts of the success of these organizations and promises to build upon these successes to achieve even more in the future.<sup>96</sup>

A recent NPC report acknowledged problems in the drive to establish successful partnerships between labor and management.<sup>97</sup> The Council surveyed those in existing partnerships and noted barriers to effective partnerships included perceptions of a lack of

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<sup>92</sup> Hornestay, *supra* note 87.

<sup>93</sup> *Id.* Other success stories from the 1996 Partnership Awards include: 1) Department of Education/AFGE: credited with increasing overdue student loan collections from \$174 million to \$862 million over three years. 2) IRS/NTEU: credited with reduction of 20 unfair labor practice complaints to zero.

<sup>94</sup> Gore, *supra* note 71.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> NPC: *A Report to the President on Labor-Management Partnerships* (Oct. 1996).

mutual trust, lack of commitment, and unclear objectives.<sup>98</sup> The Council is concerned that many agencies and bargaining units have not yet taken the first step of “signing a partnership agreement or establishing a partnership council.”<sup>99</sup> The report stresses that setting up a partnership council alone is not enough; there must be active involvement by both sides to make the program work. Survey respondents also indicate that reductions in force and budget problems pose a serious threat to the continued viability of the partnership effort.<sup>100</sup>

The NPR website provides an amusing motivational message to those forging ahead to make partnerships work. The NPR has recognized the difficulties encountered in establishing a new relationship. The document states:

There will be union officials, and managers, who will provide roadblocks to orderly change. Some managers will be totally negative, and some union officials will want it all immediately.

There are failures along the road to change, but don’t let it be said that management didn’t try to make it work. As with any new marriage, there will be:

- ‘something Old’ (statute and its adversarial procedures)
- ‘something New’ (partnerships)
- ‘something Borrowed’ (private sector experience/success)
- ‘something Blue’ (management/union faces if program fails)

Some may find this analogy rather simplistic, but it arguably fits the situation with one exception; there is no possibility of divorce or annulment.<sup>101</sup>

## **2. Organized Labor**

We want to be full partners. We want to work. We want government to work better.

We want to be there in partnership to help identify the problems. We want to be there in partnership to help craft the

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<sup>98</sup> See *supra* note 79.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See *supra* note 77.

solution. We want to be there in partnership to help implement together the solution that this government needs.

And we're prepared to work in partnership to make some bold leaps to turn this government around and make it work the way it should work.<sup>102</sup>

John Sturdivant, President, AFGE

Support for the Administration's partnership efforts appears unequivocal on the part of the leaders of the largest unions representing federal employees. This support is not surprising given the significant input these union leaders have had in the process. As shown, the unions were consulted early in the NPR process and the NPC included four representatives of organized labor. In fact, it has been argued that the disproportionate participation by the unions in the NPC led to recommendations clearly favoring labor.<sup>103</sup> Considering this influence in the process, it would be extremely awkward for union leaders to criticize the results. Essentially, they would be criticizing themselves.

Another important aspect that affects the official position taken by the union is political. The reinventing government program is a highly visible effort of the Clinton Administration. The point person for the effort, Vice President Gore, is a probable candidate for the presidency in 2000. The unions have clearly supported the Administration both verbally and financially. This undivided support has arguably linked success of the unions major initiatives with the success of the Democratic Party. Consequently, this enthusiastic support of Democrats has alienated Republicans who are taking aim at unions.<sup>104</sup> A logical conclusion drawn from the current political climate is

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<sup>102</sup> Gore, *supra* note 1 at 87.

<sup>103</sup> Johnson, *supra* note 66 at 138.

<sup>104</sup> Gregg Hitt, *House GOP Rebuffs Labor over Tax Bill*, Wall Street Journal, June 13, 1997. The article demonstrates that the Republicans clearly do not have the union's interests in mind. In fact, the rhetoric is heating up and the two sides can be fairly described as political enemies. Another example of this is the current flap over "official time" which will be discussed later in the paper.

that unions cannot afford to criticize the effort. The partnership program is the cornerstone of the NPR which represents a major effort of the Clinton Administration. Criticism of the effort would weaken the Administration that the unions so strongly support and to which the future of union initiatives are tied.

#### **a. American Federation of Government Employees (AFGE)**

“Three years of labor-management partnership have produced a Government That Works.”<sup>105</sup>

John N. Sturdivant, President, AFGE  
September 16, 1996.

Perhaps the biggest cheerleader of the federal partnership effort outside of the Administration is the president of AFGE, John Sturdivant. Mr. Sturdivant is a vocal union leader who has stressed the importance of partnerships and touted the achievements of the Clinton Administration on many occasions. He claims that the partnership effort has “inspired a fundamental shift away from the traditional adversarial style of labor-management relations toward a more cooperative and productive focus on the workplace.”<sup>106</sup> Mr. Sturdivant has declared the partnership effort a success, claiming input of unions has paid “big dividends.”<sup>107</sup>

Mr. Sturdivant backs up his assertions with specific examples of AFGE labor-management partnerships that have proven to work. AFGE has published a compilation of over thirty examples of partnerships at the local level which, they claim, have helped the

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<sup>105</sup> See *supra* note 86.

<sup>106</sup> John N. Sturdivant, AFGE National President, statement before the House Committee on Government Reform and Oversight Subcommittee on Civil Service on *The Representational Activities of Federal Employee Unions*, Sept. 11, 1996.

<sup>107</sup> *Id.*

government perform more efficiently.<sup>108</sup> The union boasts that the success of the effort is so widespread that the success stories are only the “tip of the iceberg.”<sup>109</sup>

Those with whom Mr. Sturdivant believes to be inhibiting the partnership process may feel his wrath. He requested that AFGE staffers identify career members of the Senior Executive Service believed to not adequately support Clinton Administration policies and its labor-management partnership efforts.<sup>110</sup> This list was to be sent on to the Administration in an effort to get these people moved out of their jobs. Carol Bonosaro, president of the Senior Executives Association, has complained to Vice President Gore that AFGE’s effort was a “witch hunt.”<sup>111</sup> “We’re prepared to name names,” states John Anderegg, Treasurer of AFGE Local 1812, “You know, how Santa Clause makes a list of who is naughty or nice.”<sup>112</sup>

#### **b. National Treasury Employees Union (NTEU)**

“The key to success in reinvention, the key to success in improving workplace efficiency and effectiveness is improving how employees work.”<sup>113</sup>

Robert Tobias, President  
NTEU

NTEU president, Robert Tobias, serves on the NPC, and as with Mr. Sturdivant, is a strong proponent of the Administration’s partnership effort. Mr. Tobias acknowledges problems with the effort and blames resistance from labor officials and mid-level

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<sup>108</sup> American Federation of Government Employees, AFL-CIO, *Government that Works: AFGE Labor - Management Partnerships Making the Difference*, Sept. 1996. The compilation was designed to aid other AFGE locals in their partnership efforts. Most of the case studies include points of contact for both the union and management and stress the accomplishments attributable to labor-management cooperation.

<sup>109</sup> See *supra* note 86.

<sup>110</sup> *Union ‘Witch Hunt’ Decried*, The Daily Fed, Jan. 3, 1997.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Brian Friel, *Tobias Touts Partnership*, The Daily Fed, April 9, 1997.

managers.<sup>114</sup> According to Mr. Tobias, the key to success of partnership efforts is the involvement of the union before decisions are made in all matters. The “overlapping management and union interests” should be identified and acted upon in order to sustain a successful partnership.<sup>115</sup>

### **3. Other Voices**

Comments concerning the success of the Administration’s partnership effort have been mixed. Although support of partnerships by top union officials has been almost unequivocal, local union officials, with less political stake in the effort, have expressed disappointment. An example of this discontent is stated in the position of John Johnson, President, AFGE Local 3836, Federal Emergency Management Agency:

As someone with no labor relations experience who wanted to make things better, I feel cruelly used by both AFGE and President Clinton’s administration. Partnership doesn’t work and it is not supported by management, at any level. Managers fear partnering as loss of control and co-management, not as working together to solve problems.<sup>116</sup>

It appears that there may be differing views on the part of management and labor about what the role of the union “partner” should be. Clearly, management does not view the relationship as an “equal” partnership in all endeavors. “Partnership is not co-management,” states Joanne Clifton, U.S. Information Agency’s Deputy Associate Director for Management, “We can’t say we’re going to give them co-management.”<sup>117</sup>

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<sup>114</sup> *Id.* Tobias cites three ways to improve efficiency in the federal workplace: 1) Employees must understand their roles in pursing the agency mission, 2) They must be sufficiently empowered so they can meet performance goals, and 3) They must be excited about their jobs so they willingly expend their “discretionary energy” to meet or exceed manager’s expectations.

<sup>115</sup> David Hornestay, *Partnership Puzzle*, Government Executive, July 1996, downloaded from internet website [govexec@tmn.com](mailto:govexec@tmn.com).

<sup>116</sup> John Johnson, AFGE Local 3836, *Re: Partnerships*, April 22 1997, downloaded from internet website [johnnie5@rose.net](mailto:johnnie5@rose.net).

<sup>117</sup> *Partnership Failure*, The Daily Fed, Oct. 8, 1996.

Although problems with the implementation and day-to-day operations of partnerships cannot be denied, some commentators see a brighter side to the effort. Mike Causey, *The Washington Post* staff writer, remarks, "In many instances, workers, bosses, and taxpayers have done well because of the ideas and agreements from partnership. Costly labor disputes have declined, according to official statistics, and many employees feel empowered. Even some bosses like it."<sup>118</sup> Others echo this opinion; Colleen Woodard, who recently retired as Director of Human Resources at the Commerce Department's Patent and Trademark Office, states, "Even with all the problems partnership proponents are encountering, the benefits are still very visible."<sup>119</sup>

A survey of labor-relations specialists in Washington D.C. federal agencies demonstrated mixed reviews on partnerships.<sup>120</sup> Although many welcomed the initiative, most saw little change after implementing a partnership arrangement. When change was recognized, it was generally viewed as positive. The major benefit of the partnership was viewed by survey participants as an improvement of communication between labor and management.

Some commentators are concerned that difficulties beyond control of local parties may crush partnership efforts. One concern is that a lack of Congressional financial support will make programs that do not relate to the core of the agency's mission, such as the partnership programs, "a casualty" of the agency's struggle to survive.<sup>121</sup> Similarly, the unions negotiating with the Federal Aviation Administration (FAA) fear that

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<sup>118</sup> Mike Causey, *Dancing in the Dark*, Washington Post, Dec. 11, 1996, at B2.

<sup>119</sup> Cathie M. Lane, *Bittersweet Partnership*, Feb. 1996, downloaded from internet website govexec.com. Mr. Woodard believes that the benefits derived from partnerships are directly attributable to the opening of positive lines of communication that address new ways of solving problems.

<sup>120</sup> *Id.*

management's commitment to the partnership effort will suffer because the FAA's 1996 appropriation knocked out funds appropriated for the agency's "Quality Through Partnership" program for training managers and union members.<sup>122</sup>

#### **4. Case studies**

The Administration, the NPC, and AFGE have trumpeted numerous partnership efforts as proof that the program is working. Some notable partnership success stories occurred at Kelly Air Force Base, Red River Army Depot, and the U.S. Mint. The savings in both time and money cited in these and other cases is often dramatic. For example, Kelly Air Force Base claims to have reduced unfair labor practices by 85 percent and employee grievances by 77 percent.<sup>123</sup>

##### **a. Internal Revenue Service (IRS)**

In 1994, the partnership between the IRS and NTEU was one of the featured success stories. The agency proclaimed that, "Employees (via the partnership with NTEU) are having an ever increasing input in workplace decisions."<sup>124</sup> The changes were to result in a new future that would alter the way managers do business.

Two years later the partnership deteriorated into acrimony. The difficulties between the IRS and NTEU can be linked to proposed layoffs that led the union to resort to traditional mediation processes.<sup>125</sup>

Mike Causey, writing of the presence of the IRS at the December 1996 NPC

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<sup>121</sup> Lane, *supra* note 119.

<sup>122</sup> Executive Memo, *For FAA, Money Isn't Everything*, April 1996, downloaded from internet website govexec.com.

<sup>123</sup> Memorandum from San Antonio Air Logistics Center titled: *Labor/Management Partnership at Kelly AFB Civilian Personnel Flight*, (Feb. 21, 1995), on file at 76 SPTG/DPC 143 Billy Mitchell Blvd, Ste 2., San Antonio, TX, 78241-6015.

<sup>124</sup> Scott Morizot, *IRS experiments with new management paradigms*, Dec. 14, 1994, downloaded from <http://www4.ai.mit.edu/npr/documents/text/npr/oup/eop/gov/us/1994112/14/5.htm>.

<sup>125</sup> IRS, *Union at Impasse on RIFs*, The Daily Fed, Dec. 17, 1996.

meeting, comments:

The clear purpose of the meeting, to be held at the Office of Personnel Management, is to showcase how management and labor working hand-in-hand is good for agencies, workers and the country as a whole. The idea of bosses and employees finding better ways to do things, rather than squabbling and fighting over petty issues, was introduced by the Clinton Administration...

But just to make sure today's meeting runs smoothly and ends on the obligatory high note, it might be smart to have partnership delegates from the IRS bound and gagged. Just in case! Otherwise, they might become the party-spoiling equivalent of a foreign object found floating in the punch bowl.<sup>126</sup>

#### **b. U.S. Information Agency (USIA)**

An even more dramatic reversal of relations between management and labor involves the U.S. Information Agency (USIA) and three labor organizations: AFGE, NFFE, and the American Foreign Service Association (AFSA). As late as July 1995, both sides expressed considerable hope for the future and touted successes of the partnership. The following quotes were from the agency's town meeting on May 3, 1995, marking the one-year anniversary of the agency's Joint Partnership Council (JPC):

Joseph Duffy, USIA Director reports, "(Partnership) has been an effort to think through not simply the requirement of doing our work differently, by why ...and what our task is in this new era.... We must continue to work together...We are all grateful for the work of the JPC."

Renee Earle, AFSA representative on the JPC declares, "The work of the JPC was a major success."

Stacey Rose-Blass, President of AFGE Local 1812, stated, Partnership means "we respect each other's opinions" and commented that the USIA partnership had given employees a stronger voice in USIA. She congratulated Director Duffy for his "commitment to openness, for being a good listener and learner, and for efforts to guide USIA in a positive direction."

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<sup>126</sup> Causey, *supra* note 118.

James Cook of NFFE, commented that USIA contribution in the reinvention effort helped create a culture that was “not only functional but costs less and works better.”

Razvigor Bazala, AFSA vice president for USIA, stated that the achievements of partnerships at USIA were “considerable” and “substantive” and that partnership had changed the “very culture” of USIA. He further added that the partnership at USIA “has a documented record of success that other agencies envy or view with disbelief.” He noted that “openness and transparency” at USIA was at an “unprecedented level.”<sup>127</sup>

Remarkably, slightly over a year later the partnership between AFGE and USIA ended with union withdrawal.<sup>128</sup> The breakup evolved from a dispute over staff reductions. The union claimed the management would not include them in the process. Management officials claimed that they attempted to include the union, but would not share core management functions.

John Aderegg, AFGE Chapter Treasurer, called Chairman Duffy “wishy washy” and complained of a “certain element of disrespect” from management; “To use the word concrete in the same sentence as Mr. Duffy is impossible.”<sup>129</sup> Mr. Anderegg believes the only hope for renewal of the partnership effort is to place a new set of political appointees in the agency who are committed to partnership.

Joanne Clifton, USIA’s Deputy Associate Director for Management, expressed dismay over the union’s failure to see the partnership through difficult times. She views the union request to participate as an attempt to co-manage, which she believes was

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<sup>127</sup> Ed Scherr, *Partnership Must Continue*, USIA World, July 1995.

<sup>128</sup> See *supra* note 117.

<sup>129</sup> Mr. Anderegg’s comments stand in stark contrast to the president of AFGE Local 1812 comments about Mr. Duffy just one year previously.

unreasonable. Ms. Clifton stated that the union has always publicly viewed its relationship with the agency as confrontational.<sup>130</sup>

## **5. Comments on Partnership Success/Failure**

Few can doubt the benefits of cooperation between labor and management. Not only are the costs of confrontation avoided, but opening the lines of communication often leads to more efficient ways to accomplish the mission. But why do some partnerships succeed while others fail? One reason is that partnerships are personality driven. Analogies to marriage are often given by the NPC, but marriages, it should be remembered, fail at a high rate.

More significantly, perhaps, is the unique circumstances the partnership is faced with. At some points, the interests of management and labor are simply not congruent. This could explain the dramatic changes in the partnership relationships at the IRS and USIA. While the period was tranquil both sided touted the partnership as a success. When reductions-in-force brought tension in the relationship the partnerships collapsed. It is easy to shower the other party with praise when times are good, but very difficult, when the two sides have different goals in mind. This is especially true when the attainment of the goal would negatively affect the other party.

Holding up a successful partnership and saying “it’s easy, do what they are doing” is too simplistic of an approach. Conversely, viewing an unsuccessful partnership effort does not doom a different arrangement to failure. Air Force Labor Counsel, Major Richard Johnson, states, “...partnership works only when management and labor are headed in the same direction and there is trust between the parties. It will not work if

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<sup>130</sup> Ms. Clifton’s comments are contradicted by the public statements of union officials at the JPC

either party has an uncompromising or confrontational attitude in negotiations.”<sup>131</sup> Major Johnson points out that in two of the NPC’s dramatic success stories, Kelly Air Force Base and the Army Red River Depot, possible installation closure brought the two sides together and made partnership success possible, “It was their common interest that brought them together, not reform legislation.”<sup>132</sup> On the other hand, without a push from the Chief Executive and labor leaders, partnership efforts might not have been attempted. With dramatic improvement in relations possible, both sides should make some attempt at finding common ground.

#### **D. Executive Order 12871 and Federal Sector Bargaining**

“...most immediate and potentially far-reaching change is elimination of permissive subjects which go to (the) heart of how an agency accomplishes its mission and structures its organizations.”<sup>133</sup>

Former Air Force Labor Counsel, Lt. Col. Harry Yee  
Speaking of change brought by E.O. 12871

##### **1. Background**

Before discussing the impact of E.O. 12871 on bargaining, it is important to briefly address the history of federal sector labor relations.

Although the first half of the Twentieth Century brought about tremendous strides in private sector labor relations, the federal sector was left relatively unregulated. Despite lobbying efforts, federal employee unions were unable to persuade Congress to be included in the National Labor Relations Act (NLRA) of 1935.<sup>134</sup> It was not until 1962, with President Kennedy’s E.O. 10988 that some structure was given to the process. The

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anniversary town meeting the previous year.

<sup>131</sup> Johnson, *supra* note 66 at 143.

<sup>132</sup> *Id.*

<sup>133</sup> Lt. Col. Harry Yee, JACL, *Talking Paper on Labor-Management Partnerships*, Oct. 6, 1993.

provisions of the E.O. were modeled on the NLRA and included the concept of the exclusive bargaining unit. Also included was the establishment of the employee's right to join or not join the union without interference.<sup>135</sup>

The next major advancement in federal labor relations occurred in 1969 when President Richard Nixon issued E.O. 11491. The executive order created two new federal agencies, the Federal Labor Relations Council (to enforce the order) and the Federal Services Impasses Panel (to assist in negotiations impasse). The concept of negotiation over "official time" to engage in collective bargaining was also brought out in this executive order.<sup>136</sup>

The Civil Service Reform Act of 1978<sup>137</sup> brought about modern federal labor relations practice and has been called a "comprehensive and dramatic restructuring of the federal employee personnel system."<sup>138</sup> The Federal Labor Relations Authority (FLRA) was set up to administer the Act.<sup>139</sup> The FLRA has four primary areas of responsibility: 1) representation issues (appropriateness of bargaining units), 2) processing unfair labor practice complaints, 3) resolving questions concerning negotiability of issues, and 4) adjudicating certain arbitration appeals.<sup>140</sup>

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<sup>134</sup> Lt. Col. Richard Dawson, USAFR & Lt. Col. W. Kirk Underwood, USAF, *Overview of Labor-management Relations in the Air Force*, 35 A.F.L. Rev. (2)(1991).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* At 3.

<sup>137</sup> 5 United States Code Chapter 71.

<sup>138</sup> Dawson & Underwood, *supra* note 134 at 1.

<sup>139</sup> The FLRA consists of three members appointed by the President for five year terms. The FLRA is organized into seven regions. The Office of General Counsel oversees the regional offices. The General Counsel (GC) is separate and apart from the members. The GC investigates unfair labor practice charges and argues the merits of the charges before the Board.

<sup>140</sup> Dawson & Underwood, *supra* note 134 at 4.

## 2. Negotiability Issues in the Federal Sector

As with the private sector, federal labor relations law requires both management and the union to bargain over terms and conditions of employment.<sup>141</sup> But unlike the private sector, the Federal Service Labor Management Relations Statute contains a “management rights” clause which limits the subjects in which parties can negotiate.<sup>142</sup> This broad reservation of management rights is softened by another provision of the Act which allows an agency to negotiate certain topics at its discretion.<sup>143</sup> This provision addresses what is commonly called “permissive” bargaining topics.<sup>144</sup>

This statutory framework allowed a federal agency to easily avoid negotiations under the broad dictates of the management rights clause §7106(a) or elect not to

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<sup>141</sup> 5 U.S.C. §7116(a)(5) & (b)(5).

<sup>142</sup> 5 U.S.C. §7106, the provision reads:

- (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency.
  - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
  - (2) in accordance with applicable laws-
    - (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employee;
    - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted;
    - (C) with respect to filling positions, to make selections for appointments from-
      - (i) among properly ranked and certified candidates for promotion; or
      - (ii) any other appropriate source; and
    - (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

<sup>143</sup> 5 U.S.C. §7106(b)(1), the provision reads:

- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;...

<sup>144</sup> NLRB v. Wooster Division of Borg-Warner Corp. 356 U.S. 342 (1958). The distinction between mandatory and permissive bargaining topics was first addressed in the Supreme Court decision of Borg-Warner. The Court interpreted §8(d) of the National Labor Relations Act as requiring good faith bargaining only when the issue involves “wages, hour, and other terms and conditions of employment.” As such, §8(d) serves as a phrase of limitation. If the matter does not involve wages, hours, and terms of condition of employment, the parties can discuss the issue if they please, but they are not required to.

negotiate under the permissive clause §7106(b)(1). The relationship between clauses §7106(a) and §7106(b)(1) was brought into question by the United States Court of Appeals for the District of Columbia decision in Association of Civilian Technicians, Montana Air Chapter No. 29 v. FLRA, (also known as ACT).<sup>145</sup> In ACT, the Montana National Guard agreed to bargain with the union concerning on-the-job clothing. An arrangement between the two parties was negotiated and made part of a collective bargaining agreement. The local agency viewed the issue as a permissive bargaining topic under §7106(b)(1) as a “means” used to perform work. The agreement was disapproved by the agency head on the grounds that the provision interfered with management’s ability to determine “internal security practices” covered by the management rights clause §7106(a).

The union filed an unfair labor practice charge with the FLRA. The FLRA concluded that the provision permitting employees to wear civilian clothing directly interfered with the management right to determine the means to achieve internal security goals.

On appeal, the Court of Appeals for the District of Columbia held that an agency head could not reject a contract provision directly interfering with a management right set out in §7106(a), where the issue could also be considered permissive under §7106(b)(1). Essentially, if a subject is encompassed under both §7106(a) and §7106(b)(1), management can exercise discretion to bargain about the subject. The underlying rationale of the D.C. Circuit decision is that §7106(b)(1) subjects do not become unlawful merely because they are also encompassed within §7106(a).

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<sup>145</sup> 22 F.3d 1150 (D.C.Circuit 1994).

The FLRA has accepted the reasoning of the D.C. Circuit in a recent case.<sup>146</sup>

### **3. Partnership and Bargaining**

In E.O. 12781, President Clinton specifically required agencies to bargain over subjects covered under §7106(b)(1).<sup>147</sup> This mandate essentially converted the “permissive” bargaining issues under §7106(b)(1) into “mandatory” issues. The Director, Office of Personnel Management, James King, has issued guidance to federal agencies on implementing E.O.12871:

Negotiate over the subjects set forth in 5 U.S.C.

§7106(b)(1)...These subjects—the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods and means of performing work—are directly related to specific agency reinvention initiatives and to achieving the National Performance Review goal of making Government work better and cost less. Bargaining over these subjects will also be a new experience for virtually all management and union representatives. Until the Federal Service Labor-Management Relations Statute was passed in 1978 such bargaining has been permitted at agency discretion but only rarely has that discretion been exercised. Under Executive Order 5 U.S.C. §7106(b)(1) it is now mandatory, and a failure by agency managers to engage in such bargaining would be inconsistent with the President’s directive. Therefore, Partnership Principle Agreements shall include a commitment by the parties to bargain over these formerly discretionary subjects.<sup>148</sup>

E.O. 12871’s mandate to bargain over §7106(b)(1) matters coupled with the ACT decision pose a dilemma for agencies. Before E.O. 12871, the impact of the ACT case on agencies was minimal. An agency could avoid problems by informing local negotiators

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<sup>146</sup> NAGE and Veterans Affairs Medical Center, Lexington, Kentucky 51 FLRA 386, 51 FLRA No. 36, FLRA Rep. No. 871 (1995).

<sup>147</sup> E.O. 12871 reads: “Section 2. Implementation of Labor-Management Partnerships Throughout the Executive Branch. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:... (d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same;...”

<sup>148</sup> Memorandum from James B. King, Director, U.S. Office of Personnel Management, to Heads of Departments and Agencies and Presidents of Federal Employee Unions, *Guidance for Implementing Executive Order 12871* (Dec. 16, 1993).

that they would be bound if they elected to negotiate concerning a subject prohibited by §7106(a), but also encompassed by §7106(b)(1). Put simply, the overlap between management rights of §7106(a) and permissive topics under §7106(b)(1) would not present many tactical problems, because the agency could use its discretion not to bargain under §7106(b)(1). However, E.O. 12871 has removed the statutorily granted discretion given to agency managers concerning permissive subjects. A probable consequence of this dilemma is that agency managers would try to define every issue as a management right exclusively covered by §7106(a) and not §7106(b)(1).

Mr. Joe Swerdzewski, FLRA General Counsel, claims that the ACT decision, when applied to E.O.12871's mandate, is a "partnership buster." He states, "Instead of working together to design and implement comprehensive changes to reform government and create organizations capable of delivering the highest quality of service to the American people, the parties are engaging in legal gymnastics over the scope of bargaining, while attempting to comply with the executive order mandate."<sup>149</sup> The agency is in effect discouraged from dealing with its "partner," the union. The incentive is now present for the agency to dodge cooperative efforts.

Mr. Swerdzewski requested that the FLRA issue a general ruling to offer guidance to help avoid unnecessary conflict which runs counter to partnership efforts. In arguing for the importance of a general ruling, Mr. Swerdzewski stated:

The uncertainty created by the D.C. Circuit analysis calling into question the relationship between subsections (a) and (b)(1) has become a critical barrier to achieving the goals of the Executive Order and the purposes and policies of the Statute. As the entity charged with providing

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<sup>149</sup> Memorandum from Joe Swerdzewski, Federal Labor Relations Authority Office of the General Counsel, to Phyllis N. Segal, chair, *Referral of a Major Policy Issue for a General Billing* (Feb. 28, 1995).

leadership and guidance, the Authority should issue a general ruling on this major policy issue and end this uncertainty and the negative impact it is having on our customers.<sup>150</sup>

The Authority denied the General Counsel's request for a general ruling, but they have adapted the rationale of the ACT Court.<sup>151</sup> Although the Authority now accepts the ACT rationale, they have done little to alleviate the confusion the decision has caused concerning the relationship between §7106(a) and §7106(b)(1).

#### **4. Requirement to Negotiate Over Permissive Topics**

As stated, the ACT decision holds that an agency may elect to negotiate over a permissive topic covered by §7106(b)(1) even though that topic is also encompassed by §7106(a) (impermissible bargaining topics.) ACT held that once the agency has made the election to negotiate over the permissive topic, the agency head cannot undo this election. In E.O. 12871, President Clinton has mandated bargaining over permissive topics covered by §7106(b)(1).

The questions become: What is the affect of E.O.12871? Is it an election to bargain contemplated by the ACT decision? What if the agency decides to defy presidential guidance and refuses to bargain over a permissive topic? These questions are hotly contested and have currently not been fully resolved.

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<sup>150</sup> *Id.* At 9.

<sup>151</sup> See *supra* note 146.

**5. The Agency Wins First Round: Department of the Air Force 647<sup>th</sup>**

**Air Base Group, Hanscom Air Force Base, Massachusetts and National**

**Association of Government Employee, SEIU, AFL-CIO, Local R1-8<sup>152</sup>**

The Hanscom case concerned an alleged refusal of the Air Force to negotiate a unilateral change which fell within both subsection (a) and (b)(1) of §7106 of the Statute. The union filed an unfair labor practice charge alleging that the Air Force violated the Statute by refusing to negotiate over a §7106(b)(1) matter in connection with a determination to fill 86 new positions at a time the agency had been ordered to absorb a workforce reduction of 457 civilian positions. The union demanded to negotiate the proposed workforce reductions pursuant to E.O.12871 and §7106(b)(1). The Air Force refused to negotiate and the union filed unfair labor practice charges.

The General Counsel issued a complaint based on the union charges. The complaint alleged that E.O. 12871 requires the agency to negotiate under §7106(b)(1) of the Statute. The key to the General Counsel's argument was that the President, by issuing E.O. 12871, had exercised discretion under §7106(b)(1) to negotiate. Since the President made the election to negotiate for the agency, the Air Force could not lawfully refuse to bargain over the issue.<sup>153</sup>

The Air Force, through counsel Steven Sherwood, countered that the General Counsel was trying to enforce the E.O. 12781 which by its "very specific terms creates no

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<sup>152</sup> FLRA Case No. BN-CA-41011.

<sup>153</sup> Department of the Air Force 647<sup>th</sup> Air Base Group, Hanscom Air Force Base, Massachusetts, v. National Association of Government Employees, SEIU, AFL-CIO, Local R1-8, Case No. BN-CA-41011, Opposition to Respondent's Motion to Dismiss and for Summary Justice (July 22, 1996).

rights and is not enforceable administratively or judicially.”<sup>154</sup> The executive order expressly states that it creates no rights nor can be enforced through administrative or judicial review. Mr. Sherwood argues:

Whatever the effect of E.O.12871 as it pertains to the internal management of the executive branch, it cannot be found to have created a right to bargain over the permissive subjects found in §7106(b)(1) through as asserted election. Assuming that the Executive Order does represent an election to bargain, it creates no right to have that election enforced against the respondent. Indeed, there is no right to benefit from such an election, if any was made. The application of the express terms of the Executive Order specifically precludes any attempt to enforce such an election.<sup>155</sup>

Chief Administrative Law Judge, Samuel A. Chaitovitz, agreed with the Air Force position and issued a decision granting the agency Motion for Summary Judgment. Judge Chaitovitz reasoned, “... if an agency official failed to obey the President’s directive in section 2(d) of the executive order, the appropriate remedy would be determined internally within the executive branch rather than through administrative or judicial proceedings. In this manner, potential conflicts between the terms of an executive order and the provisions of an Act of Congress are avoided.”<sup>156</sup> Although the agency was victorious at this stage, the General Counsel filed exceptions to Judge Chaitovitz’ decision and the issue remains unsettled.<sup>157</sup>

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<sup>154</sup> Department of the Air Force 647<sup>th</sup> Air Base Group, Hanscom Air Force Base, Massachusetts, v. National Association of Government Employees, SEIU, AFL-CIO, Local R1-8, Case No. BN-CA-41011, Respondent’s Opposition to Exceptions (Aug. 29, 1996).

<sup>155</sup> *Id.*

<sup>156</sup> Department of the Air Force 647<sup>th</sup> Air Base Group, Hanscom Air Force Base, Massachusetts, v. National Association of Government Employees, SEIU, AFL-CIO, Local R1-8, Case No. BN-CA-41011, Notice of Transmittal of Decision (July 31, 1996).

<sup>157</sup> Department of the Air Force 647<sup>th</sup> Air Base Group, Hanscom Air Force Base, Massachusetts, v. National Association of Government Employees, SEIU, AFL-CIO, Local R1-8, Case No. BN-CA-41011, Counsel for the General Counsel’s Brief in support of Exceptions to the Chief Administration Law Judge’s Decision and Recommended Order Granting Respondent’s Motion for Summary Judgment (Aug. 21, 1996).

## V. ADMINISTRATION POLICY AND OTHER LABOR RELATIONS ISSUES

### A. Downsizing

"President Clinton, with the cooperation of federal unions and (one suspects) an amused Republican Congress, has managed to do something Republican presidents Richard M. Nixon, Ronald Reagan, and George Bush only talked about. Namely, he has whittled the Washington bureaucracy down to size."<sup>158</sup>

Mike Causey,  
*The Washington Post*, Staff Writer

"Downsizing is not an illness, but a symptom of one of the most profound transformations ever in our economy."<sup>159</sup>

*The New York Times*, OP-ED

#### 1. The "Great Downsizer"

The trend of "downsizing" that has been en vogue in the private sector during the past decade has recently taken hold in the federal sector. Executive branch employees covered by union contracts declined by 13 percent between 1992 and 1997. "Blue collar" employees decreased by over 84,000, while "white collar" employees decreased by over 80,000.<sup>160</sup> Federal unions lost members across the board during this period with the Metal Trade Council declining by a whopping 56 percent.<sup>161</sup>

<sup>158</sup> Mike Causey, *The Great Downsizer*, Washington Post, May 18, 1997, at B2.

<sup>159</sup> *News Briefs*, The Daily Fed, Oct. 16, 1996.

<sup>160</sup> Stephen Barr & Bill McAllister, *Downsizing Cuts Federal Union Representation: More Postal Employees Covered*, Washington Post, June 11, 1997, at A21.

<sup>161</sup> *Id.*

#### FEDERAL EMPLOYEES REPRESENTED BY UNIONS

UNION	1992 MEMBERSHIP	1997 MEMBERSHIP	% CHANGE
AFGE	665,328	596,206	-10%
NTEU	148,882	136,577	-8%
NFFE	146,767	123,660	-16%
National Assoc. of Government Employees (NAGE)	66,302	54,712	-17%
Metal Trades Council	57,227	25,256	-56%
International Assoc. of Machinists & Aerospace Workers	26,493	20,633	-22%

*The Washington Post's* Mike Causey calls President Clinton "The Great Downsizer," and he notes that federal unions have been relatively quiet while this effort has taken place.<sup>162</sup> The unions must ironically listen to their political ally announce that the "era of big government is over," when big government is the source of the federal union membership. Why haven't the unions fought harder against this downsizing effort? Mr. Causey states that the unions went along with the cuts as part of their partnership with the Administration. The unions' rationale was that downsizing was inevitable and they wanted to be "inside" the process to help protect jobs.<sup>163</sup> NFFE legislative liaison official, Gene Voegtlin, believes that the unions were led down the primrose path by the Administration with promises of full partnership, expanded bargaining and agency security. These promises turned out to be hollow, resulting in a negotiating coup by the Administration of giving up very little in exchange for cooperation on this historic downsizing.<sup>164</sup> Others argue that the unions have gained enormous power with their partnership with the Administration and their new policy role can aid in shifting of the downsizing burden to parts of the agency that are less unionized.<sup>165</sup>

Although organized labor has generally gone along with downsizing, they have not remained totally silent. The AFL-CIO has officially stated that the "downsizing craze undermines [the] American system," and that "the cult of downsizing seems to be predicated on the theory that throwing people out is good business."<sup>166</sup> John Sturdivant publicly objected to the 1995 proposal to cut 79 military bases across the country,

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<sup>162</sup> Causey, *supra* note 158.

<sup>163</sup> *Id.*

<sup>164</sup> Personal interview with Mr. Gene Voegtlin, *supra* note 68.

<sup>165</sup> David A. Price, *Federal Unions' Growing Clout*, Investor's Business Daily, March 7, 1997.

<sup>166</sup> David Kameras, *Downsizing Craze Undermines American System*, AFL-CIO News, Oct. 6, 1995.

particularly the civilian workforce dominated logistic centers of McClellan Air Force Base, California, and Kelly Air Force Base, Texas, by stating that the recommended closures “would cut deeply into our nation’s defense posture and its supporting defense industrial base, siphon off modernization and readiness funds to support unplanned base closures, and critically disrupt the maintenance flow supporting military operations.”<sup>167</sup>

## **2. Surviving Downsizing**

Unions have made efforts to stop the hemorrhaging of members from downsizing. Renewed emphasis is now being placed in organizing efforts. Steve Fesler, an AFGE organizer boasted that the union has actually increased its dues-paying membership during the period. AFGE has increased its dues paying membership by 5,000 employees since 1992, which Mr. Fesler feels is “pretty significant” when viewed in this time of downsizing. He stated, “We’re confident we’ll weather any storm, and continue to build our membership.”<sup>168</sup> NFFE which experienced a staggering 16 percent decline in membership blames this decline as “the result of downsizing.” Despite the significant decline, John Paolino, NFFE’s Director of Collective Bargaining, stated, “It appears that all labor unions have retained the same density of membership.”<sup>169</sup>

## **3. Is Downsizing an Illusion?**

Conservatives and libertarian commentators have questioned the basic assumption that significant downsizing in the federal government has actually taken place during the

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<sup>167</sup> David Kameras, *AFGE Protests Plan to Cut 79 Bases*, AFL-CIO News, July 17, 1995. President Clinton again demonstrated his keen political skills in the McClellan/Kelly base closure cases. McClellan was a major employer in delegate rich California, while Kelly was a large employer of Hispanics. The President accepted the closure recommendations, while at the same time calling it “an outrage.” Again, the President managed to downsize while appeasing constituents.

<sup>168</sup> Barr and McAllister, *supra* note 160.

<sup>169</sup> *Id.*

Clinton Administration. "President Clinton's grand promise to 'reinvent' government has come to nothing," claimed Scott Hodge of The Heritage Foundation.<sup>170</sup> He stated that "The White House has pushed an agenda of pseudo-reform designed to get media attention rather than to get to the root of government's most pressing problems."<sup>171</sup> Mr. Hodge argues that the federal government has actually grown and that government programs have been perpetuated, "By focusing its efforts on reinventing rather than downsizing government, the Clinton Administration has validated and institutionalized the evolutionary survival process of obsolete government programs."<sup>172</sup>

Stephen Moore and James Carter of the Cato Institute complain that nearly 750,000 new public sector jobs have been added since January 1993, resulting from a government hiring binge.<sup>173</sup> Moore and Hodge admit that federal employment has fallen during President Clinton's tenure, but 9 out of 10 of the jobs eliminated were military.<sup>174</sup> *The Wall Street Journal* reports government employment statistics are misleading, "Of the ...civilians lopped from the federal payroll since January 1993, 17 percent were part-timers and 13 percent temporary employees. At the Environmental Protection Agency, 89 percent of those let go were temps."<sup>175</sup> Congressman John Mica states that the Administration has provided evasive answers to questions about what has been reinvented.<sup>176</sup> Citing statistics that Department of Defense reductions account for more

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<sup>170</sup> F.R. Duplantier, *Forget Reinventing, Start Cutting!*, America's Future, Dec. 1, 1996, downloaded from <http://users.accessus.net/weamiller/af/1996/dec96>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> Stephen Moore & James Carter, *The Government's Hiring Binge*, CATO This Just In, Dec. 24, 1996.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> Honorable John L. Mica, Chairman, Opening Statement to the Civil Service Subcommittee, Reinvention, Downsizing, and Illegal Buyouts (June 11,1996) available through Federal Managers Association <http://www.fpmi.com>.

than 80 percent of all federal workforce reductions, Congressman Mica noted, "This is not reinventing government, it is closing bases."<sup>177</sup>

## B. Outsourcing

"It's hard to take the Administration's partnership effort seriously, when your partner is trying to contract out your job."<sup>178</sup>

Gene Voegtlin  
NFFE Legislative Liaison

### 1. The Clinton Administration and Outsourcing

Outsourcing,<sup>179</sup> the process of having private contractors perform government services, is closely related to the issue of downsizing. Official statistics citing downsizing success ignore the rapid increase in the use of contracted labor. *The New York Times* points out that while federal jobs "have vanished on paper, many responsibilities are being performed by outside contractors."<sup>180</sup> A NFFE policy paper expressed concern that the "Clinton Administration is not separating federal employees and simply transferring work to contractors in order to meet the arbitrary downsizing goals set forth in the National Performance Review."<sup>181</sup>

No other issue appears to send the federal unions into a fit of apoplexy more than outsourcing.<sup>182</sup> Outsourcing not only threatens their members' jobs, but the union's own

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<sup>177</sup> *Id.*

<sup>178</sup> Personal interview with Mr. Gene Voegtlin, *supra* note 68.

<sup>179</sup> Outsourcing is known by a number of different terms including: "contracting out," "privatization," and "right sizing."

<sup>180</sup> Moore & Carter, *supra* note 173.

<sup>181</sup> James D. Cunningham, Sr., National President, *Contracting Out*, National Federation of Federal Employees VIEWPOINT, more information may be attained by email to NFFEHQ@erols.com. The battle over outsourcing is not limited to the public sector. The automobile industry is the most notable example of the battle going on in the private sector. The United Automobile Workers (UAW) have watched numerous "in-house" union jobs contracting out over the last decade. *The Wall Street Journal* reports that the UAW is determined to make a stand on the issue against General Motors (GM). The issue will likely spark a battle because GM was behind the other two major automobile manufacturers concerning outsourcing and believe they are at a competitive disadvantage.

<sup>182</sup> Mike Causey, *Perils of Privatization*, Washington Post, May 4, 1997 at B2.

power base. Traditionally, outsourcing of government functions has been advocated by Republicans, and this remains the case. Ironically, though, privatization's "great leap forward" has been brought by the Clinton Administration.<sup>183</sup> NAGE and NFFE have not been shy to "whack" the White House about their support of the use of outside contractors, while NTEU and AFGE maintain blind support of the Administration reserving all of their criticism for Republicans.<sup>184</sup> In fact, NTEU and AFGE argue that cooperation with the Administration has reduced the effect of outsourcing on their members.<sup>185</sup>

## **2. Arguments Against Outsourcing**

Not surprisingly, the unions have set their sites on discrediting the arguments supporting outsourcing. A major success of the anti-outsourcing effort was won by the American Postal Workers Union (APWU) in bringing back to the agency thousands of letter-sorting jobs that the previous postmaster general had contracted to private industry.<sup>186</sup> In fact, at a time when other federal unions have significantly lost membership, the APWU increased membership by 13 percent.<sup>187</sup>

Beyond allegations that outsourcing is just a means to perpetuate the falsehood that the government is shrinking, the federal unions also state substantive arguments against outsourcing. AFGE makes a three-prong attack:

- a. Privatization is a bad deal for the taxpayer: Taxpayers are paying more getting less from private contractors.
- b. Privatization is wasteful: Private contractor oversight is almost impossible.

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<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Bill McAllister, *At APWU, a Bitter Break of Longtime Allies*, Washington Post, June 11, 1997, at A21.

<sup>187</sup> Barr & McAllister, *supra* note 160.

- c. Privatization hurts people: Lay-offs hurt both government employees and their communities. Also, private contractors are less responsive to their communities than the government.<sup>188</sup>

The most intriguing argument made by critics of outsourcing is that it costs more than keeping functions in-house. Essentially, a "shadow government" of unregulated employees has been formed that is "more expensive than the visible, monitored and accountable government of federal employees."<sup>189</sup> AFGE cited a Department of Defense Inspector General report that over \$158 million was wasted through outsourcing.<sup>190</sup> NFFE cited General Accounting Office reports which they claim demonstrate the extra expense caused by outsourcing.<sup>191</sup> NFFE favors completing cost comparison studies before an agency is allowed to contract out work.<sup>192</sup>

### **3. The Future of Outsourcing**

The City of Indianapolis, Indiana, has been held up as a prime example of how the outsourcing issue should be dealt with by a public entity. Mayor Stephen Goldsmith promised, while campaigning in 1991, to privatize most functions performed by the city. *The Washington Post* reports that Mayor Goldsmith quickly realized that "private ownership was not the key to success; competition was."<sup>193</sup> Indianapolis now requires city agencies to compete with private industry for the right to deliver services. The Mayor's effort has been credited with cutting costs by 25 percent without hurting service quality.<sup>194</sup> The city has competed and won some contracts while private industry has

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<sup>188</sup> AFGE 1997 ISSUE PAPERS, on file with the AFGE, AFL-CIO, Washington, D.C.

<sup>189</sup> Cunningham, *supra* note 181.

<sup>190</sup> See *supra* note 188.

<sup>191</sup> Cunningham, *supra* note 181.

<sup>192</sup> *Id.*

<sup>193</sup> David Osborne, *The Service Secret*, Washington Post, Dec. 8, 1992, at W12.

<sup>194</sup> *Id.*

secured others. The competition efforts have met relatively little opposition from unions, mainly because Mayor Goldsmith requires private contractors to recognize the local union for former city employees they hire, and he adopted an unwritten no-layoff policy for union members. When union members lose their jobs through privatization, they are either hired by the private contractor, placed in another city job, or retrained and placed in a private sector job.<sup>195</sup> The city's new partnership with its union has been recognized by the Department of Labor for its efforts to forge a partnership, while seeking innovative ways to cut costs.<sup>196</sup>

The trend toward outsourcing has increased in recent years in both the public and private sector. Now that a track record is being developed, cost comparisons between "in-house" and "outsource" means of performing work should be more available. As long as the trends move toward outsourcing, vehement union opposition can be expected because it threatens their very survival. Innovative approaches, such as the one being attempted in Indianapolis, may reduce the strife this controversial issue raises. At least such an effort will have some cost basis, giving attack by either side less credence. The unknown variable is public opinion; which seems to be ambivalence at this time. Mike Causey, *The Washington Post* staff writer, comments:

Privatization gets little attention because it is tough to track and the numbers of affected workers (often in remote locations) are small. But if

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<sup>195</sup> *Id.*

<sup>196</sup> *Snapshot: INDIANAPOLIS*, Working Together for Public Service, U.S. Department of Labor, 1997. John McCorkhill, Administrator of Indianapolis Fleet Services, which won a bid to service city vehicles over private competitors, remarks about the necessity of union cooperation, "You've got to get your union working with you as a team rather than fighting and bickering with each other. By working with the union, we started empowering them and making some of the employees working group leaders. And now they actually help manage the process. Rather than a lot of foremen looking over their shoulders, we made these people responsible for getting the work done. They not only turn the wrenches, but they lead and guide."

enough small groups of feds get picked off, the day could come when P-men (the ‘P’ is for privatization) outnumber G-men (or women).<sup>197</sup>

### C. Official Time

Government employees have long been the butt of jokes by late-night comedians because of their alleged inefficiency in the workplace. What may make you laugh even harder – or cry – is that some of those bureaucrats are actually paid not to do their government work.

Hard to believe? It’s true. Under a practice called ‘official time,’ federal employees are encouraged to take paid time off to do a host of tasks on behalf of their labor unions. In other words, you are paying for union work, whether you agree with the goals of the work or not.<sup>198</sup>

Kenneth R. Weinstein and August Stofferahn  
The Heritage Foundation

Official time is the practice of the government allowing a union representative, who is also an agency employee, time during the duty day to conduct union business. The employee is paid for this time as if he were doing his primary job. Essentially, the practice of granting official time is a government subsidy of unions. The practice is statutorily mandated<sup>199</sup> and the statute addresses four conditions and how the conditions should be treated:

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<sup>197</sup> Causey, *supra* note 182.

<sup>198</sup> Kenneth R. Weinstein & August Stofferahn, *Using Taxpayer Dollars for Union Lobbying*, The Heritage Foundation, May 7, 1997.

<sup>199</sup> 5 U.S.C. §7131 “Official Time” reads as follows:

- (a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.
- (b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.
- (c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in duty status.
- (d) Except as provided in the preceding subsections of this section-

- a) Negotiations: Granting official time is mandated.
- b) Internal Union Business: Official time is not warranted.
- c) Issues before the FLRA: Authority determines if official time is necessary.
- d) Representational functions: There is no right to official time on these instances; the parties are allowed to negotiate on issue.

The failure to grant official time for representational functions is a common source of unfair labor practice charges filed by the union.

The granting of official time has recently been subject to attack by Republicans.

The federal unions have not been shy to make counter arguments. Official time has been around for decades; why has it become so controversial of late? There are three probable reasons for the current debate over official time: political motivations, increased use of official time during the Clinton Administration, and use of official time for lobbying efforts. Each reason will be addressed in turn.

As discussed previously, the labor movement (including the federal unions) has firmly sided with the Democratic Party. This one-sided support of the Democrats has alienated Republicans, who view the union movement as an enemy. Although Republicans such as Congressman Dan Miller argue that official time is being abused,<sup>200</sup> it is difficult to believe that the criticism of official time is not politically motivated. Republicans, stung by attacks from organized labor during the 1996 election, appear eager to strike back at policies such as official time which sustains the union's power base.<sup>201</sup>

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- (1) any employee representing an exclusive representative, or
  - (2) in connection with any other matter covered by this chapter, any employee is an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

<sup>200</sup> Dan Miller, *Unions don't have the right to rip off taxpayers*, Washington Times, June 3, 1997, at A16.

<sup>201</sup> Bruce Bartlett & Arnold Beichman, *Labor's lapsed clout*, Washington Times, June 19, 1997 at A17.

Another possible reason for the issue of official time being in the spotlight, is its increased use during the Clinton Administration. As part of the reinventing government initiative, Vice President Gore championed the use of official time to “promote cooperation.”<sup>202</sup> There appears to be no dispute that partnership efforts have increased the use of official time.<sup>203</sup> Congressman Burton complains that use of official time “has grown exponentially” since E.O.12871, and has introduced a bill entitled the “Workplace Integrity Act” to “address the growing problem of official time.”<sup>204</sup> Congressman Burton commented on this issue in response to a Letter to the Editor of *The Washington Times* by John Sturdivant:

My bill would stop federal employees from working full time for their unions. I believe in a fair day’s pay for a fair day’s work. Those who are hired to work for the taxpayer should spend a minimum of 50 percent of their time actually doing their jobs. Also, my bill limits the scope of the activities allowable under official time. I believe that something has to be done to stop subsidizing unions through official time.

There is no reason to stick the American taxpayer with the tab for activities that should be paid for out of union dues. After all, the federal government is supposed to work for all Americans, not just John Sturdivant and his peers.<sup>205</sup>

A third possible motivation for controversy lies with using official time for political lobbying. A recent FLRA decision held that official time to lobby Congress was not “political activity” barred by the Hatch Act.<sup>206</sup> The decision was based on the fact that union efforts were aimed at influencing members of Congress on pending legislation affecting terms and conditions of bargaining unit employee’s employment. The decision

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<sup>202</sup> Weinstein & Stofferahn, *supra* note 198.

<sup>203</sup> AOL NetFind at <http://www.politicsnow.com>.

<sup>204</sup> Miller, *supra* note 200.

<sup>205</sup> *Id.*

<sup>206</sup> U.S. Department of the Army Corps of Engineers Memphis District, Memphis Tennessee (Agency) and National Federation of Federal Employees Local 259 (Union), 52 FLRA 920, Jan. 3 1997.

has been criticized by Republicans claiming that the FLRA is “a body dominated by pro-union, Clinton administration appointees.”<sup>207</sup> Kenneth Weinstein and August Stofferahn of The Heritage Foundation express outrage in the use of official time for lobbying, “Allowing bureaucrats to lobby Congress for bigger budgets instead of doing their jobs has made ‘official time’ a bad joke. As Congress works to balance the budget, it should take a hard look at stopping this abuse of taxpayers ‘faith and dollars’.”<sup>208</sup>

The federal unions have been quick to respond in defense of the use of official time. Carl Goldman, Executive Director, Council 26, American Federation of State, County and Municipal Employees, comments, “Republicans can’t stop TV ads criticizing anti-worker votes, so they attack official time. That’s bad politics, and it’s bad public policy.”<sup>209</sup> John Sturdivant of AFGE is not surprisingly a strong proponent of official time.<sup>210</sup> Mr. Sturdivant argues that official time is necessary because the union is burdened to represent all employees in a unit, not just union members.<sup>211</sup> He criticizes Republican assertions of the cost of official time by arguing that a net savings occurs because of a decrease in litigation expenses. Lobbying official time is justified because, “Members of Congress are the employers of federal employees. They are the ones who

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<sup>207</sup> Miller, *supra* note 200.

<sup>208</sup> Weinstein & Stofferahn, *supra* note 198.

<sup>209</sup> Mike Causey, *Unions and Downsizing*, Washington Post, Sept. 16, 1996, at B2.

<sup>210</sup> Numerous reasons are given by AFGE to justify official time. See *supra* note 188. In the AFGE issue paper concerning official time and the Social Security Administration (SSA), the following justifications for official time are listed: 1) Unions are required to provide service to nonmembers; 2) Unions may negotiate for official time by statute; 3) The use of official time is narrowly limited; 4) SSA’s investment in official time has increased productivity; 5) SSA’s official time expenses are reasonable and modest; 6) Investment in official time more than pays for itself; 7) Official time does not constitute some unique drain on SSA trust funds; 8) Official time improves services to American people; and 9) Lawmakers using trust fund to shield true agenda.

<sup>211</sup> John N. Sturdivant, *Why unions have a right to lobby Congress using official time*, Washington Times, May 27, 1997, at A18.

determine the pay and benefits of federal employees – and even whether they have jobs.”<sup>212</sup>

#### **D. Union Security**

“Federal unions would dearly love to have an agency shop, an arrangement which would generate huge sums from nonmembers.”<sup>213</sup>

Leo Troy, Professor of Economics at Rutgers University

Union security is a term used to describe the mechanisms ensuring that all employees serviced by the union pay for this service. The NPC recommended a “fair share dues” federal union security agreement in its 1994 Report to the President,<sup>214</sup> but there has been no serious effort to implement the recommendation.

As in every endeavor, how well an organization is funded often determines its success. The federal unions complain that they are required to represent nonunion members who have not paid their “fair share.” As stated, the unions also use this argument to justify official time. A NFFE policy letter stated, “Recognizing the injustice inherent in requiring unions to expend precious resources on nonmembers, Congress made the deliberate decision to have the government support certain union representation activities by allowing the use of official time.”<sup>215</sup> This argument contends that Congress intended official time to compensate for the lack of union security. The unions argue that official time is a poor substitute for union security and have lobbied for reform.

With the political loggerheads over labor issues currently present in Washington, D.C., it is very unlikely a federal union security agreement would pass Congress. In fact,

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<sup>212</sup> *Id.*

<sup>213</sup> Troy, *supra* note 6.

<sup>214</sup> NPC, *supra* note 66.

<sup>215</sup> James D. Cunningham, Sr., National President, *Official Time*, National Federation of Federal Employees VIEWPOINT, more information may be attained by email to NFFEHQ@erols.com

Congressional Republicans have attempted to pass a national “Right to Work” law which would ban compulsory union dues.<sup>216</sup> Republicans Coverdell of Georgia and Faircloth of North Carolina have reintroduced the “National Right to Work Act.” The bill would repeal provisions of federal law authorizing private sector contracts that “force” workers to pay dues as a condition of employment.<sup>217</sup>

Is union security an unrealistic dream of federal labor leaders? Must there be a Democratic majority in both houses of Congress to pass such legislation? The answer to both questions appears to be, yes. Republicans are not apt to support political enemies. Professor Leo Troy suggests the way around the legislative process may be by executive order, as the President has used on other occasions, he states, “Mr. Clinton may try another ploy, an order permitting federal unions to charge members for services rendered, a distinction with little difference from an agency shop.”<sup>218</sup> Although there is a possibility of President Clinton issuing an executive order, there appears to be little other chance for movement in the direction of federal union security. It seems that union aspirations for a “fair share” provision will not be met in the near future.

## VI. REPUBLICAN INITIATIVES

The thrust of this paper is to analyze Clinton Administration proactive policy and its affect on federal labor relations, but it is important to see what the opposing side has offered and the Administration’s reactive policy concerning these Republican initiatives. The Republicans have generally opposed, sometimes vehemently, the NPR process and

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<sup>216</sup> Carl Horowitz, *Behind Big Labor’s New Facade*, Investor’s Business Daily, March 27, 1996.

<sup>217</sup> Cal Thomas, *Labor’s early political wagering*, Washington Times, April 9, 1997.

<sup>218</sup> Troy, *supra* note 6.

other Administration labor initiatives. As an illustration, Republicans are fast to criticize official time and union security arrangements. While the Republicans have frustrated Administrative policy, the President has in turn also stymied Republican initiatives.

#### A. The “TEAM” Act

The Republicans have also jumped on the “partnership” bandwagon, but the concern appears to be with nonunion employers. The National Labor Relations Act<sup>219</sup> prohibits a company from “dealing with” employee groups concerning terms and conditions of employment. The intent of the Act was to prevent “company unions” such as those used to thwart unionization early in the century. Republicans argue that times have changed, and that company “teams” would foster greater cooperation. The TEAM Act would:

...amend Section 8(a)(2) of the National Labor Relations Act to provide that it shall not constitute...an unfair labor practice for an employer to establish ... any organization...in which employees participate to address matters of mutual interest.<sup>220</sup>

Proponents argue that legislation is needed to clarify standards used in evaluating the legality of employee involvement efforts.<sup>221</sup>

President Clinton vetoed the TEAM Act in July 1996. The President stressed his support for partnerships and cooperative efforts, but he believed the TEAM Act would damage employee protection. The President stated:

... this legislation rather than promoting genuine teamwork, would undermine the system of collective bargaining that has served this country so well for many decades. It would do this by allowing employers to establish company unions where no union currently exists and permitting

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<sup>219</sup> 29 U.S.C. §151.

<sup>220</sup> Peter M. Leibold, *Labor Legislation in the 104<sup>th</sup> Congress: Follow the Money*, 12 Labor Lawyer (143)(Spring1996).

<sup>221</sup> *Id.*

company dominated unions....True cooperative efforts must be based on true partnerships.<sup>222</sup>

It is clear that though both the Administration and Congressional Republicans praise partnerships and cooperative efforts, they have distinctly different views on how to attain them. The Administration has aligned itself with the labor movement to oppose the TEAM Act. It is interesting to note that the Dunlap Commission, established by the Administration to make policy recommendations concerning the American workplace, has endorsed the type of employee participation programs the TEAM Act addresses.<sup>223</sup>

### **B. Compensatory Time**

Legislation has been introduced in Congress to amend the Fair Labor Standards Act to ease restrictions on overtime payments in the private sector. The legislation would allow employers to give employees a choice between overtime pay and compensatory time off (comp time).<sup>224</sup>

This issue again illustrates the divide separating the political parties on labor issues. President Clinton has threatened a veto because the bill "does not go far enough to protect worker interests."<sup>225</sup> Unions have made opposition to the bill a litmus test for Democrats seeking campaign donations. Chuck Alston, Executive Director of the Democratic Leadership Council, laments that politics have interfered with a program the people want, he states, "This effort to modernize labor law shouldn't be allowed to run aground on

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<sup>222</sup> Memorandum from The White House Office of the Press Secretary to the House of Representatives on Veto of Employees and Managers Teamwork Act (July 30, 1996) on file as document id: PDI://OMA.EOP.GOV.US/1996/7/30/7.TEXT.1.

<sup>223</sup> Leo Troy, Sacred Cows and Trojan Horses, Regulation: The Cato Review of Business & Government, downloaded from world wide web at <http://www.cato.org/pubs/regulation/reg-ordr.html>.

<sup>224</sup> Chuck Alston, *Comp Time's Time Has Come*, Wall Street Journal, May 15, 1997.

<sup>225</sup> The comp-time option has been available in the public sector since 1985.

partisan shoals.”<sup>226</sup> Unfortunately, it appears every effort to reform labor law is doomed to experience partisan bickering.

## VII. THE FUTURE

Organized labor, facing ever diminishing numbers, decided to take a more militant stand to avoid fading into insignificance in the 1990’s.<sup>227</sup> Enormous time and money have been pumped into a renewed political activism. This effort represents a great risk on the part of unions, because they have placed their eggs in one basket (the Democratic Party). Republicans, alienated more than ever from labor, could cause unions great damage if they keep control of Congress. By failing to hedge their bets, organized labor also risks being taken for granted by the Democrats. President Clinton has gone against union interests on occasion and may repeat such efforts if politically expedient. It appears that a rebirth of the labor movement depends on Democratic victories and a shift in attitudes of the general population.<sup>228</sup>

The federal sector has been a source of growth for organized labor during the past two decades, but has lately been hard hit by downsizing. With both parties preaching limited government, the downsizing trend should continue no matter who is in power,

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<sup>226</sup> Alston, *supra* note 224.

<sup>227</sup> *The Week, National Review*, June 16, 1997 at 9. National Review argues that organized labor has already fallen into insignificance. The crux of this argument is now unionized workers are paid less than non-union counterparts:

For years, the differential between the wages of union and non-union workers has been narrowing. In 1982, union members enjoyed a 7.1 percent advantage; by 1985, the gap was 4.4 percent. In the first quarter of 1997, the tables have finally turned: unionized workers now receive .8 percent less than their non-union peers. The last prop beneath organized labor’s claim to be the cornerstone of worker prosperity has collapsed.

Sustained union growth depends on finding new sources of membership. A potential source of new membership is in the professional employee ranks. Some type of union security provision would also do wonders for union coffers suffering from diminishing membership.

The future of federal unions is positive to mixed for the remainder of President Clinton's term. On the bright side, union leaders have had unprecedented input and influence on federal labor policy. This "partnership" effort promises to continue. The Administration has touted the success of such programs and shows no sign of slowing down the effort. In fact, partnerships stand as the centerpiece of future reinvention efforts. Vice President Gore promises to expand partnerships to include citizens, states, localities, and businesses.<sup>229</sup> Of course, a Gore Administration would carry on, if not expand, reinvention efforts.

The downsizing and outsourcing efforts which have accelerated during the Clinton Administration, are the biggest threat to federal labor unions. Although the unions have found a significant ally in the Administration, membership during this period has significantly diminished. President Clinton's much publicized assertion that the "era of big government is over" cannot be very comforting to the unions. Today, there are few politicians advocating growth in the size of government. With such a consensus, it is easy to predict that government programs will not grow at a fast rate, which will negatively

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<sup>228</sup> Joel Kotkin, the John M. Olin Fellow at the Pepperdine University Institute for Public Policy and a senior fellow at the Pacific Research Institute, *The New Left Takes Over American Unions*, downloaded from world wide web site American Enterprise Institute.

<sup>229</sup> Vice President Al Gore, background papers supporting a speech titled *Reinvention's Next Steps: Governing in a Balanced Budget World* (March 4, 1996).

affect union membership. The success of the current effort of the federal unions to restrict outsourcing is critical to halt future membership hemorrhage.

### VIII. CONCLUSION

There can be no doubt that the Clinton Administration has attempted to change the way management and labor relate in the federal sector. The "radical" change, promised at the onset of the NPR, has not come about.

What has changed? Clearly, the Administration has been an advocate for labor by encouraging partnerships. The expansion of subjects negotiated and the recommendation of an agency shop clearly exhibit Administration support for labor. Most importantly, union leaders have been given a voice in the Administration. The NPC's domination by union leaders has directly resulted in pro-labor recommendations.

Have the Administration's efforts been a success? The answer is mixed. The partnership effort is a worthwhile goal, and the Administration should be commended for at least attempting to attain cooperation. Also, there are numerous partnership success stories that cannot be denied. On the other hand, individual cases of failure have also been experienced. The success or failure of a partnership effort has proven to be very dependent on the individual situation the "partners" face. The evidence shows undeniably that the partnership drive has blossomed in some individual situations. But the effort as a whole seems to be more "hype" than substance. It is clear, though, that the effort has been a political success for the Administration.

One Administration partnership initiative which should be branded as unsuccessful was the attempt to convert permissive bargaining topics into mandatory topics. This

initiative was ill-advised and the consequences of the action were unanticipated. The result of this poor foresight has led to confusion and confrontation, rather than the hoped for cooperation.

Have the federal labor unions benefited by Clinton Administration policy? The unions have gained a voice in the Administration and a “partner” status in labor relations. But while pro-union talk and symbolic actions were coming from the Administration, downsizing and outsourcing were occurring at an unprecedented rate. As Mike Causey states, the Clinton Administration has a ‘predilection’ for tossing bones to the unions with one hand while killing off jobs with the other...”<sup>230</sup> By advocating partnerships, the Administration was able to quiet the federal unions while downsizing and outsourcing at a fast pace. In exchange for their silence, Mr. Causey argues that the unions received only “a few shiny beads with the word ‘partnership’ printed on them.”<sup>231</sup>

Opinions as to whether the Administration’s efforts in reforming federal labor relations have been successful vary greatly depending on the position of the person offering the opinion. What is uncontested is that labor relations issues are some of the most polarizing of all political issues. Considering the current rhetoric, the future promises to be replete with intense political battles. It appears that the politicians expect more cooperation between federal managers and labor leaders than they do among themselves.

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<sup>230</sup> Mike Causey, *Unions Stand by Their Man*, The Washington Post, June 10, 1996, at D2.

<sup>231</sup> *Id.*